

TENTATIVE RULINGS for CIVIL LAW and MOTION

July 21, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

CASE: Capital One Bank (USA), N.A. v. Hightower
Case No. CV G 10-460

Hearing Date: July 21, 2010 Department Fifteen 9:00 a.m.

Capital One Bank (USA), N.A.'s motion for judgment on the pleadings is **DENIED WITHOUT PREJUDICE**. Plaintiff failed to file a proof of service showing service of its motion on the defendant. (Code Civ. Proc., §§ 438, subd. (d) and 1005.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Doe v. Pedroia
Case No. CV PO 09-2444

Hearing Date: July 21, 2010 Department Fifteen 9:00 a.m.

The petitioner and the minor are directed to appear at the hearing or to show good cause why the petitioner and minor should not be required to appear. (Cal. Rules of Court, rule 7.952.) If the petitioner and the minor choose to show good cause, they should do so by filing a declaration before the hearing setting forth the facts supporting good cause. If the parties fail to appear at the hearing and the court has not excused their personal appearance, the petition will be denied without prejudice.

TENTATIVE RULING

Case: Probate Conservatorship of Hermila V. Yuhre
Case No. CV PC 07-140

Hearing Date: July 21, 2010 Department Fifteen 9:00 a.m.

Respondent Veronica Patty Caspers' motion for consolidation of actions is **DENIED**. (Code Civ. Proc., § 1048; Prob. Code, §§ 16061.7 & 16061.8.) Petitioner seeks to consolidate her

recently filed petition to contest the Hermila Veronica Yuhre 1987 Trust with this conservatorship action. The petition to contest the Trust does not appear to be timely filed and thus, petitioner does not meet the criteria set forth in Code of Civil Procedure section 1048, subdivision (a) for a motion to consolidate.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **The Estate of Harrell v. State Farm Bank, FSB et al.**

Case No. CV CV 09-746

Hearing Date: **July 21, 2010** **Department Fifteen** **9:00 a.m.**

Defendant Sate Farm Bank, FSB's unopposed demurrer is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff stated facts sufficient to state a cause of action for quiet title. (Code Civ. Proc, § 761.020.) The function of the demurrer is to test the sufficiency of the complaint by raising questions of law. (*Abari v. State Farm Fire & Casualty Co.* (1988) 205 Cal.App.3d 530, 534.) Whether or not defendant is a bona fide purchaser, is a question of fact that cannot be determined on a demurrer.

Defendant's request for judicial notice is **GRANTED**. (Evid. Code, §§ 452 & 453.) Courts may take judicial notice of the recordation of trust deeds as an "official act" of the County Recorder's office (executive department). (*Cal-American Income Property Fund II v. County of Los Angeles* (1989) 208 Cal.App.3d 109, 112.) Taking judicial notice of the "official act" of a governmental entity does not require the court to accept the truth of factual matters which might be deduced therefrom. (*Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 145; *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312, or further notice is required.

TENTATIVE RULING

Case: **In re claim of Griffith**

Case No. CV P2 10-93

Hearing Date: **July 21, 2010** **Department Fifteen** **9:00 a.m.**

The petitioner and the minor are directed to appear at the hearing or to show good cause why the petitioner and minor should not be required to appear. (Cal. Rules of Court, rule 7.952.) If the petitioner and the minor choose to show good cause, they should do so by filing a declaration before the hearing setting forth the facts supporting good cause. If the parties fail to appear at the hearing and the court has not excused their personal appearance, the petition will be denied without prejudice.

TENTATIVE RULING

Case: **In re Petition of Garcia**
 Case No. CV PT 09-3257

Hearing Date: **July 21, 2010** **Department Fifteen** **9:00 a.m.**

The motion for attorney's fees and costs is **GRANTED**. (Gov't. Code, § 6259, subd. (d).) As a result of the filing of the petition, Respondents disclosed the name of the driver and owner of the subject vehicle, along with the driver's license and VIN number. Thus, the filing of the petition substantially contributed to or was demonstrably influential in setting in motion the process which eventually achieved the desired result, making Petitioner the prevailing party. (Gov. Code, § 6259, subd. (d); *Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 898-902.)

Respondents are to pay petitioner \$4,590.00 in attorney's fees and costs **by August 31, 2010**. The cost of the transcript from the preliminary hearing is not an allowed cost under Code of Civil Procedure section 1033.5, subdivision (b)(5) unless it is ordered by the Court.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Navarro v. Dawson**
 Case No. CV UD 09-2454

Hearing Date: **July 21, 2010** **Department Fifteen** **9:00 a.m.**

The Court considered the opposition papers filed on July 15, 2010.

Plaintiff's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Kimberly Dawson's motion to set aside the entry of default and default judgment against her is **DENIED WITHOUT PREJUDICE**. Ms. Dawson failed to submit any evidence to establish relief under Code of Civil Procedure section 473, subdivision (b). Ms. Dawson's declaration states that she was not served with the summons and complaint. The declaration of Martina Bautista credibly contradicts Ms. Dawson's bare assertion. Ms. Dawson's declaration does not state facts showing that she lacked actual notice of the summons, which lack of notice was not caused by her avoidance of service or inexcusable neglect. (Code Civ. Proc., § 473.5.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Sica v. Regents of the University of California**
 Case No. CV CV 10-231

Hearing Date: **July 21, 2010** **Department Fifteen** **9:00 a.m.**

Defendant's request for judicial notice is **GRANTED**, except for the request to take notice of the March 24, 2005, email from Jeanne Wilson to Molly Theodossy. (Evid. Code, § 452, subds. (c) and (d); *Scharf v. Regents of Univ. of Cal.* (1991) 234 Cal.App.3d 1393, 1398, fn. 3.) The Court did not consider the declarations of Molly Theodossy and George Acero.

The unopposed demurrer based on the failure to exhaust administrative remedies is **SUSTAINED WITH LEAVE TO AMEND**. (*Campbell v. Regents of Univ. of Calif.* (2005) 35 Cal.4th 311; University of California Academic Personnel Manual ("APM")-015 and APM-016; University of California Davis APM-015, APM-016 and APM 280-05.) The complaint does not allege that the plaintiff exhausted administrative remedies or an excuse for exhausting administrative remedies. The Court does not consider the other grounds for the demurrer and the defendant may raise such grounds at a later time.

The unopposed motion to strike the prayer for attorney's fees is **GRANTED WITH LEAVE TO AMEND**. The complaint does not allege a basis for an award of fees.

Defendant shall serve the plaintiff notice of the Court's ruling by no later than July 23, 2010.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.